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**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re:
 Estate Financial, Inc.,

Debtor(s).

CASE NO.:
 9:08-bk-11457-PC

NOTICE OF SALE OF ESTATE PROPERTY

Bid Deadline: August 9, 2016

Time: 5:00 p.m.

Type of Sale: ☐ Public ☒ Private Last date to file objections: August 3, 2016

Description of Property to be Sold: Note and Deed of Trust related to 80 Acres Undeveloped Land, Felsite Ave and Aurora St., Rosamond, CA 93561 (Loan B575-05)

Terms and Conditions of Sale: See attached motion

Proposed Sale Price: \$15,000

Overbid Procedure (If Any): (i) The EFI Trustee must be informed of all of the relevant terms of the proposed bid and contact information for the bidder prior to the hearing on the Motion; (ii) the proposed bidder must provide the EFI Trustee by such time reasonably adequate information as to financial wherewithal and ability to close; (iii) the bidder (or its authorized agent or attorney capable of binding it contractually) must attend the Auction; and the bid must be \$15,000 or higher.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing: August 10, 2016 at 10:00 a.m. in Courtroom 201 of the U.S. Bankruptcy Court located at 1415 State Street, Santa Barbara, California 93101.

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Matt Sorenson, Development Specialists, Inc.

333 South Grand Avenue, Suite 4070

Los Angeles, California 90071

Tel: (213) 617-2717; Fax: (213) 617-2718

Date: July 21, 2016

EXHIBIT A

Robert B. Orgel (CA Bar No. 101875)
Jeffrey L. Kandel (CA Bar No. 115832)
Cia H. Mackle (admitted *pro hac vice*)
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Attorneys for Thomas P. Jeremiassen, EFI Trustee

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION**

In re:

ESTATE FINANCIAL, INC.,

Debtor

Case No.: 9:08-bk-11457-PC

Chapter 11

**EFI TRUSTEE'S NOTICE OF MOTION AND
MOTION FOR ORDER APPROVING SALE
BY AUCTION OF INTERESTS IN NOTE
AND DEED OF TRUST RELATED TO REAL
PROPERTY (80 Acres Undeveloped Land,
Felsite Ave and Aurora St., Rosamond, CA
93561) FREE AND CLEAR OF LIENS OR
INTERESTS, OR, IN THE ALTERNATIVE,
ABANDONMENT OF ESTATE'S INTEREST;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
THOMAS P. JEREMIASSEN**

(LOAN B649-05)

Hearing:

Date: to be set
Time: to be set
Location: US Bankruptcy Court
1415 State Street
Courtroom 201
Santa Barbara, CA 93101
Judge: The Honorable Peter Carroll

**TO SUBJECT INVESTORS, U.S. TRUSTEE, EFI CREDITORS' COMMITTEE, EFMF
LIQUIDATING TRUSTEE, SPECIAL NOTICE PARTIES IN THE EFI CASE, ANY
HOLDERS OF SECURITY INTERESTS IN ANY ASSET(S) THAT ARE THE SUBJECT OF
AND PROPOSED TO BE AFFECTED BY THE PROPOSED SALE (COLLECTIVELY,
THE "NOTICE PARTIES") AND, VIA THE TRUSTEE'S WEBSITE, TO ALL CREDITORS
AND PARTIES IN INTEREST:**

PLEASE TAKE NOTICE THAT Thomas P. Jeremiassen (the "Trustee"), the duly
appointed chapter 11 trustee for the estate ("Estate") of debtor Estate Financial, Inc. ("EFI"), hereby

1 moves this Court (the “Motion”) for an order pursuant to section 105 and 363 of title 11 of the
2 United States Code (the “Bankruptcy Code”), Rules 2002, 6004 and 9014 of the Federal Rules of
3 Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1, 6004-2 and 9013-1 of the Local
4 Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California (the
5 “Local Rules”), authorizing: (A) the sale (the “Sale”) free and clear of interests, by auction in open
6 Court, of the note and deed of trust (the “Note”) related to the real property captioned in the title of
7 this Motion (the “Property”) for which the loan identified in the caption of this Motion provided
8 funds (the “Loan”), which Sale would be at a minimum auction price of \$15,000 (to at least cover
9 possible anticipated post-auction costs of the Estate) and would proceed only upon obtaining
10 majority consent of investor-creditors in the Loan (“Subject Investors”); and (B) if there is no Sale,
11 the Estate’s abandonment of the Note to permit the EFI Trustee to proceed with confirmation of his
12 pending liquidation plan (under which the EFI Trustee’s authority to service the Loan and deal with
13 the Note will terminate). By the Motion, the EFI Trustee also seeks authorization to: (1) have the
14 Sale conducted at an auction to be held before this Court at a date and time to be determined by the
15 Court, in accordance with the procedures described below in the Motion (the “Auction”); and (2) use
16 the proceeds generated by the Auction, if any, (a) first for reimbursement to the EFI Trustee for
17 prepetition and postpetition advances relating to the Property (the “Estate Reimbursement”) and (b)
18 to the extent of any proceeds in excess of the Estate Reimbursement, for either distribution to
19 consenting Subject Investors in accordance with the procedures and parameters established in this
20 case (as defined below, the “Settlement Parameters”) or for set aside in a disputed claims reserve for
21 non-consenting Subject Investors. In connection with the Sale or abandonment, the Trustee also
22 proposes that he be granted authority to offer to grant, in exchange for certain releases, unsecured
23 claims to the Subject Investors as set forth herein if either a Sale closes, but there are insufficient
24 proceeds to cover the Estate Reimbursement in full, or no Sale closes and the EFI Trustee abandons
25 the Estate’s interest in the Note.

26 **PLEASE TAKE FURTHER NOTICE** that the relief sought is being brought in the form of
27 this Motion, rather than using the abbreviated procedures established by this Court in the *Procedures*
28 *Order re: (1) Real Property Sales and Related Distributions and Payments, Including Brokerage*

1 *Commissions; (2) Loan Payoffs and Reconveyances; (3) Related Compromises; (4) The Making of*
2 *Secured Advances; and (5) Loan Collection, Administration and Enforcement, Including*
3 *Foreclosures, Forbearances, and Deeds in Lieu* [EFI Docket No. 271] (the “Procedures Order”),
4 because, even though the relief sought by the Motion is similar to relief permitted to be sought under
5 the Procedures Order, the Procedures Order does not specifically cover the sale of a note.

6 **PLEASE TAKE FURTHER NOTICE** that the relief sought is based on the attached
7 Memorandum of Points and Authorities, declaration of Thomas P. Jeremiassen (the “Jeremiassen
8 Declaration”) attached hereto, the record and pleadings on file in this case, and such further oral and
9 documentary evidence as may be presented at any hearing on the Motion.

10 **PLEASE TAKE FURTHER NOTICE** that the Court will conduct a hearing on the Motion
11 (the “Sale Hearing”) at a date and time to be set by the Court. You will be served with a separate
12 notice of the hearing date and time for the Motion as well as the deadline for filing any response to
13 the Motion.

14 **WHEREFORE**, the Trustee respectfully requests that this Court enter an order granting the
15 Motion and relief requested therein and such other and further relief as is just and proper under the
16 circumstances.

17
18 Dated: July 25, 2016

19 PACHULSKI STANG ZIEHL & JONES LLP

20 By /s/ Jeffrey L. Kandel
21 Robert B. Orgel
22 Jeffrey L. Kandel
23 Cia H. Mackle

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25
26
27 Attorneys for the EFI Trustee
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The deed of trust securing the Loan at issue is the only EFI first priority lien on which the Trustee has not foreclosed. He has not foreclosed due to his concern that the value of the Property securing the Loan may not be worth as much as the unpaid real property taxes which have accrued (and which continue to accrue) in connection with the Property. Accordingly, the Trustee has worked with the Borrower for years on alternative methods of obtaining value for Subject Investors and the Estate (*see, e.g.*, the description of the “Short Pay” below), albeit, all to no avail.

The Trustee had managed efforts to realize upon the Note and over 500 similar notes as to other investors based on the prepetition servicing agreements entered into by the Debtor and investors. The EFI Trustee lacks the funds to cure all alleged defaults of the Debtor under the servicing agreements. Now, a plan of liquidation in this case is due to be considered by the Court concurrently with the hearing with respect to this Motion under which all of the servicing agreements will be rejected. Thus, upon the plan’s effective date, the Trustee will lose the ability to act on behalf of Subject Investors as to the Note.

After abandonment of the Estate’s interests in the Note to the Debtor, the Subject Investors would still retain their interests in the Note. However, without the EFI Trustee to act on behalf of all Subject Investors pursuant to the Procedures Order and Loan Servicing Agreements, the EFI Trustee believes that action by the Subject Investors to monetize their interests is unlikely. There is no other known agreement among the Subject Investors and the EFI Trustee believes that obtaining one-hundred percent agreement is near impossible and that using a state court receiver is not economically viable. Accordingly, the Trustee is proposing that the Auction be held to attempt to derive as much value as possible for the Estate and Subject Investors. If no bids are received, the bidder doesn’t close, or majority consent for the Sale from the Subject Investors is not obtained, the Trustee believes it is in the best interest of the Estate to abandon the Secured Note to EFI and relieve the Estate, and the Liquidating Trust under the plan of liquidation, of any potential responsibilities as the holder of the Note.

1 If a Sale occurs, in the event that the Auction generates proceeds less than sufficient to
2 reimburse the Estate for prepetition and postpetition advances, or if no Sale occurs and the Note is
3 abandoned, in both instances, the Trustee proposes that he be authorized to offer each Subject
4 Investor the opportunity to be granted an unsecured claim in the Case in the full amount he/she/it
5 invested in exchange for the release of any other claims against the Estate related to the Loan.

6 **II.**

7 **BACKGROUND**

8 **A. Procedural Background**

9 1. On June 25, 2008, an involuntary petition was filed against Estate Financial, Inc.
10 commencing its above-captioned bankruptcy case and on July 16, 2008, an order for relief was
11 entered by consent.

12 2. On July 1, 2008, a voluntary bankruptcy petition was filed by Estate Financial
13 Mortgage Fund, LLC (“EFMF”) commencing its bankruptcy case. EFMF is the largest investor in
14 loans arranged by EFI. It is a limited liability company and EFI was its manager.

15 3. On July 28, 2008, Bradley D. Sharp accepted his appointment as chapter 11 trustee
16 of EFMF (the “EFMF Trustee”) and on July 30, 2008, Thomas P. Jeremiassen accepted his
17 appointment as EFI Trustee (together with the EFMF Trustee, the “Trustees”).

18 4. On July 15, 2011, the Court entered an order confirming the *Joint Chapter 11 Plan*
19 *of Liquidation (Dated as of November 18, 2010)* in the EFMF case.

20 5. On April 8, 2016, the Trustee and official committee of unsecured creditors in the
21 case filed their *Third Amended Liquidating Plan Under Chapter 11 of the Bankruptcy Code Dated*
22 *April 8, 2016 Proposed by the Chapter 11 Trustee and Creditors’ Committee* [Docket No. 3639]
23 (the “Plan”). A hearing to consider confirmation of the Plan will be held on August 10, 2016.

24 **B. The Procedures Order and Settlement Parameters**

25 6. On October 27, 2008, the United States Bankruptcy Court for the Central District of
26 California (the “Court”) entered the Procedures Order. Pursuant to the Procedures Order, to
27 facilitate the efforts of the Trustees to take a variety of actions in a timely and cost-effective manner
28 with respect to loans and / or real properties in which the estates of EFI and EFMF hold interests,

1 and in which various co-owners hold interests (or investors contend they hold co-ownership
2 interests), among other things, the Court granted the Trustee authority to sell real property owned
3 by one or the other trustee or other co-owners or any combination of them, pay related closing costs
4 and distribute the proceeds after, *inter alia*, giving notice and opportunity to object.

5 7. On April 1, 2009, the Trustees filed their *Joint Motion of Chapter 11 Trustees to (1)*
6 *Authorize Settlement Parameters with Investors in EFI Originated Loans and (2) Approve*
7 *Settlement Agreement Between EFI and EFMF in Accordance with Settlement Parameters;*
8 *Memorandum of Points and Authorities* [EFI Docket No. 442] (the “Settlement Motion”) to, among
9 other things, establish a framework for settlement for those investors whose investments were not
10 properly recorded or had similar defects. On June 11, 2009, the Court entered the *Order Granting*
11 *Joint Motion of Chapter 11 Trustees to (1) Authorize Settlement Parameters with Investors in EFI*
12 *Originated Loans and (2) Approve Settlement Agreement Between EFI and EFMF in Accordance*
13 *with Settlement Parameters* [EFI Docket No. 555] (the “Settlement Order”) which approved, among
14 other things, the settlement parameters (the “Settlement Parameters”) contained in the Settlement
15 Motion.

16 **C. Background Related to Subject Property and Proposed Sale**

17 8. On May 22, 2014, the Trustee proposed accepting less than the full amount owing by
18 the borrower under the Loan (the “Short Pay”) pursuant to the Procedures Order by filing and
19 serving his *Notice of Trustee’s Proposed: (1) Acceptance of Short Pay (80 Acres Undeveloped*
20 *Land, Felsite Avenue and Aurora St., Rosamond, CA 93561; (2) Reconveyance of Deed of Trust;*
21 *(3) Reimbursement of Prepetition and Postpetition Advances; and (4) Disposition or Distribution of*
22 *Balance of Proceeds (Loan B649-05)* (the “Sale Notice”) on the same terms as set forth herein.

23 9. Although the Trustee obtained majority consent for the Short Pay, the borrower
24 claims that he has been unable to consummate (and he has not consummated) the proposed Short
25 Pay transaction. Further, because delinquent taxes owed on the Property (which are believed to
26 exceed \$250,000) may exceed the Property’s value, the Trustee believes foreclosing on the Note
27 and taking ownership of the Property would not be in the best interests of the Estate or Subject
28 Investors.

III.

RELIEF REQUESTED

By the Motion, the EFI Trustee seeks Court issuance of an order, pursuant to 11 U.S.C. § 363(b) & (f), Bankruptcy Rules 2002(a)(2), 6004 and 9014, authorizing: (1) the Sale, free and clear of interests, of the Note related to the Property for which the Loan provided funds, which Sale shall be conducted at the Auction, subject to a minimum bid of \$15,000, and occur only if majority consent of the Subject Investors is obtained; and (2) use of proceeds generated by the Auction, if any, (a) first for reimbursement to the EFI Trustee for prepetition and postpetition advances relating to the Property and (b) to the extent of any proceeds in excess of the Estate Reimbursement, either for distribution to consenting Subject Investors in accordance with the Settlement Parameters or for set aside in a disputed claims reserve for the non-consenting Subject Investors. If a Sale occurs, in the event that the Auction generates proceeds less than sufficient to reimburse the Estate for prepetition and postpetition advances, or if no Sale occurs and the Note is abandoned, in both instances, the Trustee proposes that he be authorized to offer each Subject Investor the opportunity to be granted an unsecured claim in the Case in the full amount he/she/it invested in exchange for the release of any other claims against the Estate related to the Loan.

IV.

MEMORANDUM OF POINTS AND AUTHORITIES

A. The Proposed Sale is Appropriate and in the Estate's Best Interests.

Pursuant to § 363(b)(1) of the Bankruptcy Code, a trustee, after notice and a hearing, may sell, other than in the ordinary course of business, property of the estate. A trustee's application of his sound business judgment in the sale of such property is subject to great judicial deference. *In re Moore*, 110 B.R. 924 (Bankr. C.D. Cal. 1990); *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985).

In determining whether any sale of assets out of the ordinary course of business should be approved, bankruptcy courts usually consider the following factors:

- (1) Whether a sufficient business reason exists for the sale;
- (2) Whether the proposed sale is in the best interest of the estate, which in turn

consists of the following factors:

(a) that terms of the sale are fair and reasonable;

(b) that the proposed sale has been adequately marketed;

(c) that the proposed sale terms have been properly negotiated and proposed in good faith; and

(d) that the purchaser is involved in an “arms-length” transaction with the seller; and

(3) Whether notice of the sale was sufficient.

See generally In re Walter, 83 B.R. 14, 19-20, (B.A.P. 9th Cir. 1988) (“there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business . . . the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. . . .”).

The EFI Trustee believes that the Note has little, if any, value as a result of accrued delinquent property taxes on the Property. However, prior to abandoning the secured Note, the Trustee believes it is in the best interests of the Estate and Subject Investors to conduct the Auction in the event any party, including any Subject Investor, is willing to pay the Estate for the Secured Note. Jeremiassen Decl., ¶ 4. As set forth below in the proposed Auction procedures, the Trustee proposes to take no bid lower than \$15,000 (an amount that the EFI Trustee believes is likely to at least cover all potential post-auction costs of closing a Sale).

1. Majority Consent

The Auction is conditioned on a Majority Investor Vote (defined below). In accordance with the Procedures Order and applicable Loan Servicing Agreements, there must be favorable votes from Subject Investors listed on **Exhibit B** hereto that the EFI Trustee believes in good faith presently hold or last held more than 50% in amount of the beneficial interests in the Loan (or their successors), including any interests that may be avoidable under the Bankruptcy Code but which have not actually been set aside (a “Majority Investor Vote”). The Majority Investor Vote will be solicited in connection with the filing of this Motion by a separate letter being sent to Subject

Investors by the Trustee.

If majority consent is not obtained, the Trustee will not sell the Note and will proceed with abandonment of the Estate's interest in the Note, as set forth herein.

2. Free and Clear of Liens or Interests.

In addition to the Procedures Order and Loan Servicing Agreements, the EFI Trustee is authorized to sell the Note free and clear of investors' interests, based on section 363(f) of the Bankruptcy Code.

The Bankruptcy Code permits a sale of real property "free and clear of any interest in such property of an entity other than the estate" if any one of the following five conditions is met: (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f). Section 363(f) is written in the disjunctive; thus, satisfaction of any one of the five conditions is sufficient to sell property free and clear of all liens and the relevant bases for the sale being "free and clear" will be set forth in the applicable notice. *See, e.g., Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988); *Mutual Life Ins. Co. v. Red Oak Farms, Inc. (In re Red Oak Farms, Inc.)*, 36 B.R. 856, 858 (Bankr. W.D. Mo. 1984).

To the extent the Trustee obtains majority consent to proceed with the Sale of the Note, the Trustee seeks that the sale be free and clear of investor interests under section 363(f) of the Bankruptcy Code on the basis that the interests fall under sub-sections (1) and/or (2): either the Subject Investors have expressly consented in writing to the Proposed Sale, or, a majority of lenders in their respective Loan has voted in favor of the Proposed Sale so non-bankruptcy law (*i.e.*, the Loan Servicing Agreements) allow sale of such interests.

3. Procedure for Auction.

The EFI Trustee seeks to establish as auction procedures that (i) the EFI Trustee must be informed of all of the relevant terms of the proposed bid and contact information for the bidder prior

1 to the hearing on the Motion; (ii) the proposed bidder must provide the EFI Trustee by such time
2 reasonably adequate information as to financial wherewithal and ability to close; (iii) the bidder (or
3 its authorized agent or attorney capable of binding it contractually) must attend the Auction; and the
4 bid must be \$15,000 or higher.

5 To help assure that the highest and price is being attained, the EFI Trustee is posting notice
6 of the sale in the Court's register for such purpose in accordance with Local Bankruptcy Rule 6004-
7 2. If a bid is properly made in accordance with the above procedures prior to the hearing hereon, the
8 Trustee will recommend approval of the sale to the bidder with the highest and best bid at the
9 Auction.

10 Courts have regularly approved and enforced orderly bidding procedures, holding that the
11 interest in regular, reliable sales under the aegis of the court is paramount. *See, e.g., In re Gil Bern*,
12 526 F.2d 627, 629 (1st Cir. 1975); *In re Twenevers, Inc.*, 127 B.R. 467 (D. Colo. 1991); *In re Karpe*,
13 84 B.R. 926, 932 (Bankr. M.D. Pa. 1988); *In re Table Talk, Inc.*, 53 B.R. 937, 945 (Bankr. D. Mass.
14 1985). The bidding procedures requested above are structured to provide an orderly bidding process
15 without encumbering the process with unnecessary structure.

16 **B. Reimbursement of Prepetition and Postpetition Advances.**

17 Advances were permitted under the Loan Servicing Agreement ("LSA") executed by each
18 investor for "costs and expenses as [EFI] may reasonably determine are necessary to protect the
19 [investors'] interest in and to enforce the [investors'] rights under the Loan Documents and, if
20 necessary, to manage, refinance or sell the Property" and "may include, without limitation, ... the
21 costs and expenses of engaging attorneys, accountants ... and other third parties." Also, under the
22 LSA, advances are subject to repayment with interest at the maximum legal rate and EFI is entitled
23 to an annual one percent servicing fee. As well, recoupment is appropriate based on the common
24 benefit afforded by such expenditures. To the extent the Auction results in sales proceeds, the EFI
25 Trustee seeks recoupment of its advances and other charges in the amount of \$74,054.00.

26 **C. Treatment of Subject Investors.**

27 If, as a result of the Auction, the Note sells for an amount in excess of the Trustee's advances
28 for postpetition taxes and other costs incurred by the Trustee, the Trustee may propose distribution

1 of any such funds (unless *de minimis*) to investors which will be set forth in a separate notice
2 pursuant to the Procedures Order. In the event the proceeds of the Auction are insufficient to allow a
3 distribution to the Subject Investors or even to reimburse the Estate for all the postpetition advances,
4 the EFI Trustee is proposing to provide each Subject Investor with an unsecured claim against the
5 EFI estate for the full amount of the Subject Investor's investment in the Loan, as set forth on
6 **Exhibit A** hereto, in exchange for the release of any other claims against the Estate related to the
7 Loan.

8 To the extent any Subject Investor is willing to enter into a Settlement Agreement on these
9 terms, which the Trustee will propose to each Subject Investor, the Trustee submits that such a
10 settlement is in the best interests of the Estate. Further, such a settlement would be in conformity to
11 settlements the Trustee has made with other Subject Investors where the proceeds of sale are
12 insufficient to provide for a distribution.

13 **D. Abandonment if No Bidders or Sale Does Not Close.**

14 Section 554(a) of the Bankruptcy Code provides that, "[a]fter notice and a hearing, the
15 trustee may abandon any property of the estate that is burdensome to the estate or that is of
16 inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). In evaluating decisions to
17 abandon property of the estate, courts focus on whether such decision reflects a business judgment
18 made in good faith. *See, e.g., In re Cult Awareness Network, Inc.*, 205 B.R. 575, 579 (Bankr. N.D.
19 Ill. 1997) (citations omitted); *In re Wilson*, 94 B.R. 886, 888-889 (Bankr. E.D. Va. 1989); *In re*
20 *Moore*, 110 B.R. 924, 928 (Bankr. C.D. Cal. 1990) ("The choice of which type of action [is
21 appropriate to liquidate the assets of the estate] (whether it be acceptance of the offer, a counteroffer,
22 negotiation, open bidding, or bringing a formal motion for abandonment) belongs to the trustee
23 within the sound exercise of the trustee's business judgment so long as the trustee fulfills his
24 statutory duties.").

25 If no acceptable bid for the Secured Note is received, the Trustee's concern that the Estate's
26 interest in the Note has no value, in light of the amount of the real property taxes encumbering the
27 Property in a position senior to the lien of the Secured Note, will be affirmed. In addition, the
28 applicable Loan Servicing Agreements will be rejected upon confirmation of the Plan, which will

1 prevent the Estate from being able to administer the Note thereafter on behalf of Subject Investors.
2 Also, if the maker of any accepted bid does not close, or if majority consent for the Sale is not
3 obtained from the Subject Investors, a Sale will not be possible. Thus, under such circumstances,
4 abandonment of the Estate's interest in the Note is appropriate. Although such abandonment will
5 not prevent the Subject Investors from themselves attempting to secure value for the Note, as
6 indicated above, the EFI Trustee believes that, absent the Sale, the Subject Investors will have little
7 or no practical ability to monetize the Note.

8 As set forth above, if the Estate's interest in the Note is abandoned, the Trustee seeks
9 authority to offer to exchange releases from the Subject Investors for allowance for them of general
10 unsecured claims in the amount of their original investment, which will be proposed to Subject
11 Investors in a separate letter being sent by the Trustee.

12 **E. Notice is Appropriate and Adequate.**

13 The EFI Trustee is serving notice and this Motion on the Subject Investors, the Borrower and
14 Notice Parties in accordance with this Court's prior *Order Generally Limiting Scope of Notice*
15 [Docket No. 273] and will post a copy of this Motion on the case website promptly upon its filing.

16 **V.**

17 **CONCLUSION.**

18 For all the foregoing reasons, the EFI Trustee respectfully requests that the Court enter an
19 order granting the relief requested above and such other and further relief as is just and proper.

20 Dated: July 25, 2016

PACHULSKI STANG ZIEHL & JONES LLP

21 By /s/ Jeffrey L. Kandel

22 Robert B. Orgel
23 Jeffrey L. Kandel
24 Cia H. Mackle

25 Attorneys for the Trustee
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DECLARATION OF THOMAS P. JEREMIASSEN

I, Thomas P. Jeremiassen, declare as follows:

1. I am the duly appointed chapter 11 trustee of the estate of the debtor Estate Financial, Inc.

2. I have personal knowledge of the facts set forth herein and, if called upon as a witness, I could and would competently testify as to all of the matters stated therein. I make this declaration in support of the foregoing Motion.¹

3. The deed of trust securing the Loan at issue is the only EFI first priority lien on which I have not foreclosed, due to my concern that the value of the Property securing the Loan may not be worth as much as the unpaid real property taxes which have accrued (and which continue to accrue) in connection with the Property. Accordingly, I have worked with the Borrower for years on alternative methods of obtaining value for Subject Investors and the Estate to no avail. The borrower has been unable to consummate the proposed Short Pay transaction. Further, because delinquent taxes owed on the Property may exceed its value, I believe foreclosing on the Note and taking ownership of the Property would not be in the best interests of the Estate or Subject Investors.

4. I believe that the Note has little, if any, value as a result of accrued delinquent property taxes on the Property (which are believed to exceed \$250,000) may exceed the Property's value, I believe foreclosing on the Note and taking ownership of the Property would not be in the best interests of the Estate or Subject Investors.

5. However, prior to abandoning the secured Note, I believe it is in the best interests of the Estate and Subject Investors to conduct the Auction in the event any party, including any Subject Investor, is willing to pay the Estate for the Secured Note.

6. To the extent the Auction results in sales proceeds, the EFI Trustee seeks recoupment of the Estate's advances and other charges in the amount of \$74,054.

7. If no acceptable bid for the Secured Note is received, my concern that the Estate's interest in the Note has no value, in light of the amount of the real property taxes encumbering the Property in a position senior to the lien of the Secured Note, will be affirmed. In addition, the

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 applicable Loan Servicing Agreements will be rejected upon confirmation of the Plan, which will
2 prevent the Estate from being able administer the Note thereafter on behalf of Subject Investors.
3 Thus, under such circumstances, abandonment of the Estate's interest in the Note is appropriate.

4 8. In addition, if the Estate's interest in the Note is abandoned, I am proposing to allow
5 general unsecured claims to Subject Investors in the amount of their original investment, which will
6 be proposed to Subject Investors in a separate letter being sent by the Trustee.

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States of America that the foregoing is true and correct.

9 Executed this 20th day of July, 2016 at Los Angeles, California.

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12 Thomas P. Jeremiassen
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EXHIBIT A

Subject Investor Name	Proposed Unsecured Claim
Beverly Bell, Trustee	\$ 20,000.00
Bonnie J. Hoenisch, Trustee	\$ 10,000.00
Bonnie K. Nelson	\$ 27,179.05
Brenda J. Campbell, Trustee	\$ 50,000.00
Calvin A. Kushen, Trustee & Claudia A. Kushen, Trustee	\$ 28,000.00
Carilyn M. Anderson, Trustee	\$ 15,000.00
Cary Burns	\$ 10,000.00
Clifford Andreas Munk	\$ 20,000.00
Dante Arbrun, Trustee & Geraldine Arbrun, Trustee	\$ 50,000.00
Dean Thompson, Trustee	\$ 10,000.00
Edith Zimmer, Trustee	\$ 19,200.00
Estate Financial Mortgage Fund, LLC	\$ 4,359,286.24
Jeff Critchley	\$ 5,000.00
Joan H. Monck, Trustee	\$ 15,000.00
Larry Ravera	\$ 50,000.00
Marilyn Larsen-Phillips & James Phillips	\$ 10,000.00
Matthew Renner	\$ 50,000.00
Michael E. Shaw	\$ 20,000.00
Naoko T. Burns	\$ 40,000.00
Norma Jean Foster & Christina Affinito	\$ 52,834.71
Peggy Jean Coffman, Trustee	\$ 10,000.00
Rayburn Bradshaw, Trustee & Venida Bradshaw, Trustee	\$ 25,000.00
Tam T. Trinh	\$ 25,000.00
Thomas D. Bernard, Trustee & Patricia Lee Bernard, Trustee	\$ 14,000.00
Thomas K. Schultheis & Toni L. Schultheis	\$ 91,500.00
Virginia Miller	\$ 10,000.00
Zivorad Jancic & Mary Jane Jancic	\$ 30,000.00

EXHIBIT B

BEVERLY BELL, TRUSTEE
41 HIGHCLIFF POINT
SHERWOOD PARK, ALBERTA, T8A5L6
CANADA

BONNIE J. HOENISCH, TRUSTEE
6343 RIO LINDA DRIVE
RANCHO PALOS VERDES, CA 90275-3365

BONNIE K. NELSON
124 - 21ST STREET
PASO ROBLES, CA 93446

BRENDA J. CAMPBELL, TRUSTEE
2051 CLIFF DR. #19
SANTA BARBARA, CA 93109

CALVIN A. KUSHEN, TRUSTEE
CLAUDIA A. KUSHEN, TRUSTEE
8206 AMBER DR., SOUTHWEST
LAKEWOOD, WA 98498

CARILYN M. ANDERSON, TRUSTEE
532 CHUMASH COURT
PASO ROBLES, CA 93446

CARY BURNS
4155 TRANQUILLA AVE.
ATASCADERO, CA 93422

Clifford A. Munk
c/o Andrew Munk
1540 Avenida De Los Padres
Morgan Hill, CA 95037

DANTE ARBRUN, TRUSTEE
GERALDINE ARBRUN, TRUSTEE
247 LARSON LANE
GREENFIELD, CA 93927-5023

DEAN THOMPSON, TRUSTEE
5830 Robin Hill Dr #41
Lakeport, CA 95453

EDITH ZIMMER, TRUSTEE
62128 E. REDWOOD DR
TUCSON, AZ 85739

1 Estate Financial Mortgage Fund, LLC
2 c/o Bradley D. Sharp as Chapter 11 Trustee
3 333 S. Grand Ave, Suite 4070
4 Los Angeles, CA 90071

5 JEFF CRITCHLEY
6 3053 TOUCHMAN STREET
7 SACRAMENTO, CA 95833-4410

8 JOAN H. MONCK, TRUSTEE
9 352 BOBWHITE DRIVE
10 PASO ROBLES, CA 93446

11 LARRY RAVERA
12 3995 LINNE ROAD
13 PASO ROBLES, CA 93446

14 MARILYN LARSEN-PHILLIPS
15 JAMES PHILLIPS
16 15313 GOSFORD ROAD
17 BAKERSFIELD, CA 93313-9613

18 MATTHEW RENNER
19 179 NIBLICK #305
20 PASO ROBLES, CA 93446

21 MICHAEL E. SHAW
22 12080 E HIGHWAY 20
23 CLEARLAKE OAKS, CA 95423

24 NAOKO T. BURNS
25 813 NORTH "C" STREET
26 LOMPOC, CA 93436

27 NORMA JEAN FOSTER
28 CHRISTINA AFFINITO
1700 LA PLAYA WAY
SACRAMENTO, CA 95864

PEGGY JEAN COFFMAN, TRUSTEE
1710 PINERIDGE
CAMBRIA, CA 93428-5838

RAYBURN BRADSHAW, TRUSTEE
VENIDA BRADSHAW, TRUSTEE
P.O. Box 2021
Paso Robles, CA 93447

TAM T. TRINH
968 MIRA MONTE DR #4
SANTA BARBARA, CA 93109

1 THOMAS D. BERNARD, TRUSTEE
2 PATRICIA LEE BERNARD, TRUSTEE
3 258 High Meadow St.
4 Simi Valley, CA 93065

5 Thomas K. Schultheis
6 Toni L. Schultheis
7 4455 Via Bendita
8 Santa Barbara, CA 93110

9 VIRGINIA MILLER
10 12151 DALE AVENUE, C-206
11 STANTON, CA 90680-3843

12 ZIVORAD JANCIC
13 MARY JANE JANCIC
14 5060 VENADO AVENUE
15 ATASCADERO, CA 93422

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **EFI TRUSTEE'S NOTICE OF MOTION AND MOTION FOR ORDER APPROVING SALE BY AUCTION OF INTERESTS IN NOTE AND DEED OF TRUST RELATED TO REAL PROPERTY (80 Acres Undeveloped Land, Felsite Ave and Aurora St., Rosamond, CA 93561) FREE AND CLEAR OF LIENS OR INTERESTS, OR, IN THE ALTERNATIVE, ABANDONMENT OF ESTATE'S INTEREST; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF THOMAS P. JEREMIASSEN** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **July 25, 2016**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **July 25, 2016**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express

The Honorable Peter Carroll
United States Bankruptcy Court
Central District of California
1415 State Street
Santa Barbara, CA 93101

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 25, 2016

Mary de Leon

Date

Printed Name

/s/ Mary de Leon

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Mailing Information for Case 9:08-bk-11457-PC

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Mark Bradshaw mbradshaw@shbllp.com, sswartzell@shbllp.com;rhodges@shbllp.com
- Martin J Brill mjb@lnbrb.com
- James L Brunello kateover66@yahoo.com
- Christopher Celentino celentinoc@ballardspahr.com, burkec@ballardspahr.com
- Jonathan J Damen BKnotice@rcolegal.com, RCO@ecf.inforuptcy.com
- Caroline Djang crd@jmbm.com
- Joseph A Eisenberg jae@jmbm.com,
vr@jmbm.com;tgeher@jmbm.com;bt@jmbm.com;jae@ecf.inforuptcy.com
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- Brian D Fittipaldi brian.fittipaldi@usdoj.gov
- John W Fricks jfricks@ogdenfricks.com
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- Thomas P Jeremiassen (TR) tjeremiassen@brg-expert.com
- David A Juhnke docket@sjmslaw.com
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- Kelly M Raftery bknotice@mccarthyholthus.com, kraftery@ecf.courtdrive.com

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

- Dean G Rallis drallis@afrcf.com,
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- Bill Taylor ecfnofices@4stechnologies.com
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- Darlene C Vigil cdcaecf@bdfgroup.com
- Marshall C Wallace mwallace@allenmatkins.com
- Kristin S Webb bknotice@rcolegal.com, RCO@ecf.inforuptcy.com
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- Edward T Weber bknotice@rcolegal.com
- Katherine M Windler kwindler@verizon.net
- Jennifer C Wong bknotice@mccarthyholthus.com
- Kelly A Woodruff kwoodruff@fbm.com
- Jonathan R Zeko jzeko@zekolaw.com, donna@zekolaw.com